



ITAB

12-03-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #72

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CHAOS HOLDINGS, INC.

:

Petitioner

:

v.

:

Canc. No. 30,782

LUXOTTICA LEASING S.P.A.

:

(Assignee of

BAUSCH & LOMB INC.

:

Registrant

:

02 DEC 12 AM 9:30
TRADEMARK TRIAL AND
APPEAL BOARD

REGISTRANT'S MOTION TO VACATE
ORDER TO SHOW CAUSE

On November 15, 2002, the Board issued an order for Applicant to show cause why judgment should not be entered since an answer had not been filed. However, on August 5, 2002, Applicant filed and served its answer. A copy of the answer is attached.

Because the answer was filed, the order to show cause should be vacated.

LUXOTTICA LEASING S.P.A.

By


Michael A. Grow

Arent Fox Kintner Plotkin & Kahn, PLLC

1050 Connecticut Avenue, NW

Washington, DC 20036

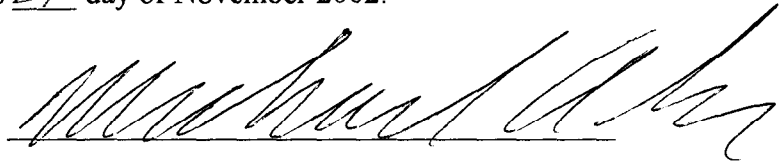
(202) 857-6000

Attorney for Registrant

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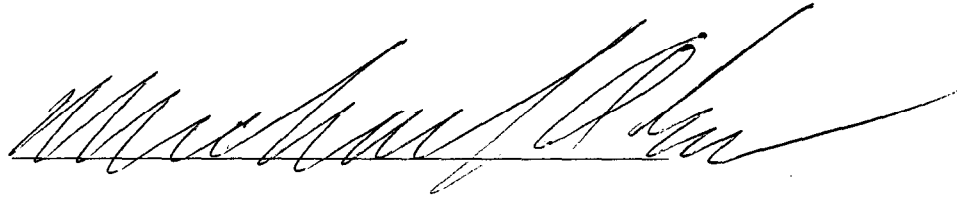
CERTIFICATE OF MAILING

It is hereby certified that the attached Applicant's motion to vacate order to show cause (re Canc. No. 30,782) is being deposited with the U.S. Postal Service marked first class mail, postage prepaid, addressed to the Hon. Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 this 27th day of November 2002.

A handwritten signature in black ink, appearing to read "Michael J. Volpe", written over a horizontal line.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served on Petitioner's counsel Louis Weinstein of Volpe and Koenig PC at Suite 400, One Penn Center, 1617 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103 this 27th day of November 2002 marked first class mail postage prepaid.

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(Assignee of	:	
BAUSCH & LOMB INC.	:	
	:	
Registrant	:	

ANSWER

Luxottica Leasing S.p.A. hereby answers the petition to cancel filed in the above referenced proceeding as follows.

1. Registrant admits, through information it has obtained since the filing of the petition to cancel, that Petitioner filed Application No. 75/681,866 for the mark CHAOS and that registration was preliminarily refused on the grounds that Petitioner's mark was allegedly confusingly similar to Registrant's mark as shown in Registration No. 2,054,723. However, the refusal has been withdrawn and, therefore, Registrant denies the allegations contained in the unnumbered first paragraph of the petition.

2. Registrant is without sufficient knowledge to form a belief as to any investigation conducted by Petitioner and, therefore, denies any allegations relating thereto. Registrant denies the remaining allegations in the unnumbered second paragraph of the petition.

AFFIRMATIVE DEFENSES

1. Petitioner has failed to state a claim upon which relief may be granted.
2. Petitioner's claims are barred by the doctrine of waiver.

3. Petitioner's claims are barred by the doctrine of laches.
4. Petitioner's claims are barred by the doctrine of estoppel.
5. Petitioner's claims are barred by the doctrine of acquiescence.
6. Petitioner's claims are barred by the fact that Petitioner's application has been approved and published in the Official Gazette.

In view of the foregoing, Registrant requests that the notice of opposition be dismissed.

LUXOTTICA LEASING S.P.A.

By 

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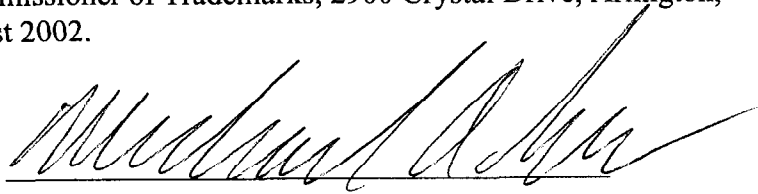
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Attorney for Registrant

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It is hereby certified that the attached answer to the petition to cancel (re Canc. No. 30,782) is being deposited with the U.S. Postal Service marked first class mail, postage prepaid, addressed to the Hon. Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 this 5th day of August 2002.



CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served on Petitioner's counsel Louis Weinstein of Volpe and Koenig PC at Suite 400, One Penn Center, 1617 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103 this 5th day of August 2002 marked first class mail postage prepaid.

